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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/893,327 | 06/27/2001 | James T. Cole | GRI-99-007 | 2040 |

7590 05/18/2004

Mark E. Fejer
Gas Technology Institute
1700 South Mount Prospect Road
Des Plaines, IL 60018

EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/893,327 | COLE ET AL. |
| | Examiner CARL D. PRICE | Art Unit 3749 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 February 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 9-15 is/are allowed.
- 6) Claim(s) 16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 February 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 9-16 have been considered but are moot in view of the new ground(s) of rejection.

Claims 1-8 directed to non-elected species were previously cancelled by applicant.

Claims 9-16 remain under examination.

In regard to claim 16, applicant argues that the prior art references of record fail to disclose or teach the structure of the convection oven now set forth in applicant's claims. In particular, applicant asserts the prior art reference of Brunner (U.S. Patent No.- 4862599) is unable to 'cook' in the manner of the claimed invention "because it has no heat source". In the analysis of the prior art, applicant goes on to say that Brunner "... relies strictly on ambient air for drying. Accordingly, because the apparatus of the Brunner patent contains no heating source and, thus, is unable to cook as required by Applicant's claimed invention.". The examiner disagrees with applicant's analysis of Brunner. Applicant's attention is directed to page 8, of the examiner's office action mailed on 11/13/2003, wherein a portions of the text (column 7, lines 24-62) found in Brunner appear. Applicant's attention is directed to column 6, lines 46-56, and again to column 7, lines 24-62, which explicitly disclose the inclusion of a "*heating* radiator 11" in Brunner. Furthermore, Brunner (column 6, lines 46-56) states that "... the heating radiator 11

is arranged lengthwise along flow passage 9 at some distance from axial fans 10". Flow passage 9 being described by the examiner in the previous office action as structure which meets applicant's claimed "blower plenum" limitation. The prior art reference of Brunner, including a heating radiator (11) located in the blower plenum (9) meets the newly recited limitations of applicants claimed invention with regard to the "heating means for heating said cooking chamber disposed within said blower plenum".

Applicant also argues, that the "direction of rotation" referred to in Brunner refers to the direction in which the fans are facing, not to the "reversibility of the fans" intended by applicant. While Brunner does provide a discussion as to the "direction of rotation" and the fans being adjustable around a vertical axis 10', the examiner holds the position that the phrase "at least one reversible blower wheel", broadly recited in applicant's amended claim 16, does not patentably distinguish over the reversible fans of Brunner.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16: rejected under 35 U.S.C. 102(b)

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Brunner(U.S. Patent No.- 4,862,599).

In regard to method claim 16, Brunner discloses a method of operating an oven including heating an air supply with a heating radiator (11) mounted in a blower plenum (9), creating different air flow patterns during the time, or heating cycle, the oven is operated (see column 7, lines 49-62, for example) by orienting reversible blower wheel (10) mounted in a blower plenum (9). Brunner also controlling actuators (17) for selectively positioning adjustable airflow control surfaces (16) which are located within the heating chamber (6) and used to affect the distribution and flow pattern of heated air conveyed through, and about articles being treated in, the heating chamber.

In regard to claim 16, the steps recited in the method of operating the oven disclosed by Brunner, including creating multiple airflow patterns within an oven chamber, is not patentably distinguishable from the steps applicant's method for creating multiple airflow patterns within a cooking chamber. The term "cooking" and the phrases "during a cooking cycle" and "during a baking cycle" are deemed to be statements of intended use which fail to further limit the scope of the claimed invention. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The mere use of the term "cooking" or "baking" fails to result in a manipulative difference as compared to the prior art.

Allowable Subject Matter

Claims 9-15 are allowed.

Conclusion

THIS ACTION IS MADE FINAL

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

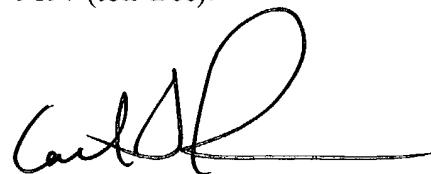
USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is 703-308-1953. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 703-308-1935. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE
Primary Examiner
Art Unit 3749

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